

Appl. NO. 09/832,464
Amdt. dated: February 11 , 2004
Reply to Office Action of November 11, 2003

REMARKS

Claims 1-8 are in the application. Claims 1-8 are rejected. By the present amendment, claims 1, 3, 4, 5, 6, and 7 are amended, and new claims 9-13 are added. Support for the amendments to claim 1 are found on page 17, lines 5-15, page 25, lines 13-29, and page 26, lines 1-2. Support for the amendment to claim 3 is found on page 14, lines 28-29; page 15, lines 13-15; and page 24 , lines 7-10. Support for the amendments to claim 4 is found on page 31, lines 3-23. New claims 9-13 are supported by page 31, lines 3-22 and page 32, lines 1-4. The amendments and new claims add no new matter.

In view of the amendments and following remarks, reconsideration of claims 1-8 and consideration of new claims 9-13 are respectfully requested.

§112 Rejections

Claims 3-7 are rejected under 35 USC § 112, second paragraph, as being indefinite.

Applicants have amended claim 3 for clarity to indicate that FtsZ is the name of a cell division regulating protein that was originally identified in *E. coli*, and that the claim encompasses FtsZ proteins that are derived from other microbial species and considered to be a homolog of the *E. coli* FtsZ protein. As shown in B. Beall et al. (1988) J. Bacteriology 170:5855-4864 and W. Margolin et al., (1991) J. Bacteriology 173 (18) :5822-5830, the sequences of the FtsZ protein of *E. coli*, *R. meliloti* and *B. subtilis* were known in the art before the effective filing date of the present. For the convenience of the Patent Office, copies of these articles are attached to the information disclosure statement, which is being filed herewith.

As requested by the Patent Office, Claim 4 has been amended for clarity to indicate that one of the proteins is fused to a T7.tag peptide, a His-tag peptide, a Flag peptide, a heart muscle kinase substrate peptide, or combinations thereof. In addition, new claims 9-13, which recite the sequence of specific T7 tag peptides, His tag peptides, Flap peptides, and/or heart muscle kinase substrate peptides have been added to the application.

Although applicants believe that the specification and claims 4-7 make it clear that the terms "reporter group" and "reporter molecule" are interchangeable, applicants have amended

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claims 4-7 to make the language in claims 4-7 consistent with the language in the detailed description of the invention.

Applicants submit that the claims, as amended, are definite and request withdrawal of the rejection.

§ 102 Rejections

Claims 1 and 2 are rejected under 35 USC §102(e), as being anticipated by Shoyab et al. (hereinafter Shoyab et al.)

Claim 1, as amended, recites that the first purified protein comprises amino acid 39 through amino acid 328 of SEQ ID NO. 2, the amino acid sequence of SEQ ID. NO. 2, the amino acid sequence of SEQ ID NO. 3, or, in order, the amino acid sequences of SEQ ID NO. 4, SEQ ID NO. 5, SEQ ID. NO. 6, SEQ ID. NO. 7, SEQ ID NO. 8, SEQ ID. NO. 9, SEQ ID NO. 10, SEQ ID NO. 11, SEQ ID NO. 12, SEQ ID NO. 13, and SEQ ID NO. 14.

Shoyab et al. does not disclose a protein comprising amino acid 39 through amino acid 328 of SEQ ID NO. 2. Shoyab et al also does not disclose a protein comprising the amino acid sequence of SEQ ID NO. 2 or the amino acid sequence of SEQ ID NO. 3. In addition, Shoyab et al does not disclose a protein comprising in order, SEQ ID. Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14. Lacking such disclosures, Shoyab et al. does not anticipate claim 1 as amended. Claim 2 depends from claim and, for the same reasons, is not anticipated by Shoyab et al.

Double Patenting

Claims 1-8 are rejected under the judicially created doctrine obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 594889. As the present application and US. Patent No. 594889 are commonly owned, applicants are filing herewith a terminal disclaimer, which obviates the rejection.

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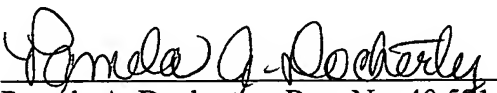
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In view of the amendments, remarks, and terminal disclaimer, Applicants submit that claims 1-8 and new claims 9-13 are now in condition for allowance. Prompt notification of such allowance is respectfully requested.

Respectfully submitted,

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